Preferred Physicians Medical 10th 1987-1997 Anniversary

Anesthesia & the LAW

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Ulnar Nerve Damage: New Hampshire Defense Verdict

Plaintiff, a 41 year old male, claimed ulnar nerve damage after arthroscopic knee surgery with general anesthesia. Plaintiff claimed that the injury, which was not relieved by additional surgery, interfered with household and recreational activities. His wife claimed loss of consortium. Plaintiff's suit named the anesthesiologist, surgeon, and hospital.

Plaintiff's anesthesia expert, Brian McAlary, M.D., of Saginaw, Michigan, testified that the majority of ulnar nerve injuries are preventable and concluded therefore that the health care providers in this case fell below the standard of care. Dr. McAlary indicated that the injury probably occurred as a result of an ischemic event, a reduced blood supply caused by inadequate padding or improper positioning.

Defendant anesthesia expert, Robert Stoelting, M.D., of the University of Indiana, testified that plaintiff had a predisposition to cubital tunnel syndrome based on his hobbies of fishing and refinishing automobiles. According to Dr. Stoelting the timing of the patient's complaint suggested that the injury did not occur at the time of the operation. This theory was supported by an absence of complaints during the patient's hospitalization. In addition, the physical therapist involved in the patient's care indicated it would have been difficult for the patient to use crutches as well as he did, had the nerve damage been present. The physical therapist also indicated that improper use of crutches could have caused the injury.

Plaintiff's initial demand of $250,000 was reduced prior to trial to $75,000. The hospital settled prior to trial for $20,000 and the demand to the anesthesiologist was lowered to $15,000. No offers were extended after discussions with the anesthesiologist who expressed his desire to submit the case to a jury. The jury deliberated for two hours prior to returning a defense verdict in favor of the anesthesiologist and the other health care providers.

Ken Bouchard of Manchester, New Hampshire, defended the case on behalf of the anesthesiologist. Contact Steve Sanford at PPM regarding this file.❖

Ulnar Nerve Damage: Defense Verdict in Missouri

Plaintiff, a 65 year old male, claimed ulnar nerve damage following bilateral hernia repair with spinal anesthesia. Plaintiff claimed the injury interfered with activities of daily life as well as impaired profitability of his chinchilla ranch. Plaintiff filed suit against the anesthesiologist, CRNA, the anesthesia group, the surgeon, and the hospital.

The anesthesiologist, assisted by a CRNA, positioned the patient's arms at less than 90 degrees of abduction using padded arm boards and foam elbow pads.

Plaintiff's anesthesiology expert was Beverly Britt, M.D., of Toronto, Ontario. Dr. Britt opined that the injury resulted from improper positioning. Despite significant medical literature to the contrary, Dr. Britt testified that the standard of care requires abduction of the arms at 60 degrees or less with pronation of the hands.

The defense expert, John Butterworth, M.D., of the University of North Carolina, testified that given the level of sedation it was unlikely the patient lost consciousness during the procedure and, therefore, would have been able to move his arm to relieve any pressure to the ulnar nerve. Moreover, Dr. Butterworth indicated that abduction of less than 90 degrees was the standard of care.

The defense also produced evidence suggesting that most ulnar nerve injuries resolve substantially over time and the objective testing of the plaintiff suggested same. The defense also was able to

demonstrate that plaintiff's claim of lost income from his chinchilla ranch was related to significant declines in the chinchilla industry.

Plaintiff's $150,000 settlement demanded to the anesthesia providers was reduced just prior to trial to $70,000. Upon consultation with the insured, no settlement offer was extended on behalf of the anesthesia providers. Prior to trial, the plaintiff did reach settlement with the surgeon and hospital for a total of $80,000. Plaintiff also dismissed the individual anesthesia providers and proceeded to trial only against the anesthesia group. The dismissal of the anesthesiologist and CRNA appeared to be a tactical decision based on plaintiff's belief that a jury would be less sympathetic to a corporate defendant as compared to the individual anesthesiologist and CRNA.

The jury deliberated for 50 minutes prior to returning a defense verdict. Post trial analysis suggests that the plaintiff may have damaged his credibility by exaggerating the extent of his injury. Several jurors noted that on one occasion during the trial plaintiff used his injured hand to pick up an item despite testimony that he was unable to do so.

Diana Moore, Preferred Physicians Medical's national defense counsel along with Richard Dorr of Springfield, Missouri, tried the case. Contact Steve Sanford at PPM for additional details.❖

Femoral Nerve Damage: Directed Verdict in Florida Case

Plaintiff, a 63 year old female, claimed femoral nerve damage after gynecological surgery with epidural anesthesia. On the second postoperative day, the patient complained of numbness and weakness in the left leg and was diagnosed with a femoral neuropathy. Plaintiff filed suit against the anesthesiologist, the surgeons, the nurses, and the hospital.

During discovery, plaintiff pursued four separate theories of injury: 1) improper administration of the epidural; 2) improper surgical positioning; 3) surgical misuse of vaginal blades; and 4) pressure due to assistant surgeon leaning on patient's leg.

Prior to trial, plaintiff's treating neurologist testified in his deposition that he was unaware of any information or literature suggesting that femoral neuropathy could be caused by the administration of an epidural. The neurologist, however, refused to rule out the possibility that the injury was related to the epidural.

Similarly, plaintiff's anesthesia expert, Rafael Miguel, M.D. testified at deposition that he did not believe the epidural had caused the injury, nor did he believe the anesthesiologist was responsible for any malpositioning of the patient's lower extremities.

Despite this deposition testimony, plaintiff's attorney refused to voluntarily dismiss the anesthesiologist. Finding no evidence of anesthesia malpractice, Preferred Physicians Medical made no settlement offers in response to plaintiff's $250,000 demand.

At trial, plaintiff abandoned the theory that the injury was caused by the epidural. As a result, defense counsel at the close of evidence requested and the judge granted a motion for directed verdict in favor of the anesthesiologist.

The trial of the case continued against the other defendants, and the jury returned a verdict of $110,000 against the hospital and surgeon.

Suzanne Elinger served as defense counsel and Helen Rice managed the file on behalf of PPM.❖

RISK MANAGEMENT SEMINARS

Preferred Physicians Medical is scheduled to provide a number of risk management seminars during 1997. Look for us at the following events:

February 20	Johns Hopkins Anesthesiology Faculty and Residents	Baltimore, Maryland
March 23-24	New Jersey Society of Anesthesiologists	Atlantic City, New Jersey
April 5-7	The American Society of Regional Anesthesia	Atlanta, Georgia
May 11	Society of Cardiovascular Anesthesiologists	Baltimore, Maryland

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